

**From:** "Harvey, Bart" <bharvey@enterprisefoundation.org> on 04/06/2004 02:21:13 PM  
**Subject:** Regulation BB - Community Reinvestment Act



# THE ENTERPRISE FOUNDATION

April 6, 2004

Docket No. 04-06  
Communications Division  
Public Information Room, Mailstop 1-5  
Office of the Comptroller of the Currency  
250 E St. SW,  
Washington 20219

Docket No. R-1181  
Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington DC 20551

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th St NW  
Washington DC 20429

Regulation Comments, Attention: No. 2004-04  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street NW  
Washington DC 20552

To Whom It May Concern:

The Enterprise Foundation appreciates this opportunity to comment on the Notice of Proposed

Rulemaking for revising the regulations for the Community Reinvestment Act (CRA). Enterprise and its subsidiary organizations, primarily the Enterprise Social Investment Corporation, have invested more than \$5 billion to support more than 160,000 affordable homes in low-income communities across the country. Many of our partners are depository institutions covered by the CRA. There is no federal policy more important to expanding housing and economic opportunity to low-income families and communities than the CRA.

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We commend the agencies for taking a thoughtful, deliberative approach to the sensitive and complex task of revising the CRA regulations. We appreciate the opportunity to discuss with agency staff our specific recommendations (submitted jointly with the Local Initiatives Support Corporation) for strengthening bank community reinvestment.

We are disappointed that the agencies declined to accept our recommendations, especially our recommendations to provide a new Community Development Test for large retail institutions comprising at least 35 percent to 40 percent of such institutions' overall CRA rating, and to allow those institutions to receive CRA credit outside their assessment areas, provided they are adequately serving their assessment areas under the CRA. We believe these provisions would have made the CRA an even more effective policy for strengthening communities.

Certainly, it is critical that the CRA continue to encourage bank investment in low-income areas, especially through bank investments in tax credits such as the Low Income Housing, New Markets and Historic Tax Credits. (We commend the Office of the Comptroller of the Currency for its December 2003 letter to the Community Development Financial Institutions Fund stating that an institution's investment in connection with the New Markets Tax Credit program in a Community Development Entity (CDE), or a loan by a financial institution CDE to a qualified low-income community business or another CDE, would receive favorable CRA consideration, and the apparent concurrence with that letter by the other agencies.)

We appreciate the agencies' commitment to providing additional guidance on the CRA investment test. The issues the agencies have identified for clarification are all appropriate and

we look forward to working with the agencies on the specifics of additional investment test policy. In particular, we believe it is imperative to revisit the utility of including as investment test criteria the extent to which investments are “innovative” and “complex.” Those well-intentioned terms may have outlived their usefulness and may in fact engender perverse effects in the community development finance system. In general, we believe that more emphasis should be placed on the extent to which investments meet community development needs and less on their structural attributes. Within that context, it would be possible, and desirable, to provide special consideration for investments that are *also* “innovative,” especially in ways that could be expanded and replicated, as well as responsive to community needs.

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The agencies also have taken steps in the revised regulations to combat predatory lending. Specifically, the regulations would clarify that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. While this minor modification is a step in the right direction, we are very concerned that it does not go far enough and may have the effect of protecting from sanction lenders that engage in other (perhaps worse) forms of predatory lending, such as unnecessarily high and/or hidden fees, mandatory arbitration and other abusive practices.

We encourage the agencies to examine other approaches to ensuring that CRA-regulated institutions do not engage in, or otherwise support, predatory lending. We believe the overwhelming majority of institutions do not. We strongly encourage the agencies to work with these institutions, their partners and advocates to develop additional policy that strikes the appropriate balance between enabling banks to serve subprime borrowers efficiently and effectively, while not allowing predators to take undue advantage of broad regulatory requirements to harm low-income people and communities.

Sincerely,

F. Bahr III

F. Barton Harvey III

Chairman of the Board and

Chief Executive Officer